

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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ELECTRONICALLY FILED
DOC #:
DATE FILED: <u>9/21/2020</u>

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 SESA, INC., :
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 Plaintiff, :
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 -v- :
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 TERRAFINA, LLC, FRUNUT GLOBAL :
 COMMODITIES, LLC, FRUNUT GLOBAL, LLC, :
 JAMES LOCKE, KENAN IZCI, and ENGIN YILMAZ, :
 :
 Defendants. :
 :
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LEWIS J. LIMAN, United States District Judge:

Defendants Frunut Global LLC and Engin Yilmaz move to dismiss the complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. Dkt. No. 18. Plaintiff opposes the motion but cross-moves to amend the complaint under Fed. R. Civ. P. 15(a). Dkt. Nos. 22, 27. Defendants oppose the cross-motion.

Leave to replead is freely granted under Rule 15 when justice so requires, particularly at an early stage of the case. Pursuant to Paragraph 3(B) of the Court's Individual Rules of Practice in Civil Cases, when a defendant moves to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and the plaintiff seeks to file an amended complaint in response, the Court ordinarily will permit the amendment and deny the motion to dismiss as moot. Defendant by letter then can indicate it will rely on its original motion to dismiss or can file a new motion to dismiss or otherwise respond.

The Court will follow that practice here. Plaintiff's motion to amend at Dkt. No. 27 is GRANTED. Defendants' motion to dismiss the original complaint at Dkt. No. 18 is DENIED as MOOT. Plaintiff shall file the amended complaint on ECF within two (2) days of this Order.

Defendants shall file a letter on ECF within 20 days of service of the amended complaint on them, and that letter should indicate whether they intend to stand on the original motion or whether they will file a new motion to dismiss and when they request to file that motion.

The Court will hold a scheduling conference following a decision on the motion to dismiss. All discovery is STAYED pending such a scheduling conference.

SO ORDERED.

Dated: September 21, 2020
New York, New York



LEWIS J. LIMAN
United States District Judge